

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2003-0001

**CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES RELATED TO TIMBER HARVEST ACTIVITIES
IN THE LAHONTAN REGION**

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region, (hereinafter Regional Board) finds that:

1. California Water Code (CWC) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate regional board a report of waste discharge ("report of waste discharge" or "ROWD") containing such information and data as may be required by the Regional Board;
2. The Regional Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Board finds that a waiver of waste discharge requirements for a specific type of discharge is not against the public interest pursuant to CWC Section 13269;
3. CWC Section 13269 provides that any such waiver of waste discharge requirements shall be conditional and may be terminated at any time by the Regional Board;
4. The Regional Board, in accordance with CWC Section 13269, waived waste discharge requirements for certain types of timber harvest activities in 1988 as set forth in Regional Board Resolution No. 6-88-18;
5. CWC Section 13269 provides that these waivers expire effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be renewed at minimum every five years;
6. The Regional Board, in compliance with CWC Section 13269, reviewed the previously issued categorical waiver for timber harvest activities and has determined that it should be eliminated and replaced by a new categorical waiver;
7. In accordance with CWC Section 13269, the discharge of waste associated with timber harvest activities shall be regulated in the future by waivers, or individual or general waste discharge requirements;
8. The Regional Board has adopted the Water Quality Control Plan for the Lahontan Region (Basin Plan) that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Lahontan Region;
9. Pursuant to the Basin Plan and State Board Plans and Policies, including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:

- a. Agricultural Supply (AGR)
- b. Aquaculture (AQUA)
- c. Preservation of Biological Habitats of Special Significance (BIOL)
- d. Cold Freshwater Habitat (COLD)
- e. Commercial and Sportfishing (COMM)
- f. Flood Peak Attenuation/Flood Water Storage (FLD)
- g. Freshwater Replenishment (FRSH)
- h. Ground Water Recharge (GWR)
- i. Industrial Service Supply (IND)
- j. Migration of Aquatic Organisms (MIGR)
- k. Municipal and Domestic Supply (MUN)
- l. Navigation (NAV)
- m. Hydropower Generation (POW)
- n. Industrial Process Supply (PRO)
- o. Rare, Threatened, or Endangered Species (RARE)
- p. Water Contact Recreation (REC-1)
- q. Non-contact Water Recreation (REC-2)
- r. Inland Saline Water Habitat (SAL)
- s. Spawning, Reproduction, and Development (SPWN)
- t. Warm Freshwater Habitat (WARM)
- u. Wildlife Habitat (WILD)
- v. Water Quality Enhancement (WQE);

10. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. The factors in CWC Section 13241, including economic considerations, were considered as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Resolution implement these previously developed water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in the above paragraph;

11. In 1981, the State Water Resources Control Board (State Water Board): (a) certified a plan entitled “Water Quality Management for National Forest System Lands in California” that was developed and submitted by the United States Department of Agriculture, Forest Service (US Forest Service); (b) designated the US Forest Service as the Water Quality Management Agency (WQMA) for specified activities on National Forest System lands in California that may result in nonpoint source discharges, including timber management, vegetative manipulation, fuels management, road construction and watershed management; and (c) executed a Management Agency Agreement with the US Forest Service for the purpose of implementing the certified plan and WQMA designation;

12. Pursuant to Section 208 of the federal Clean Water Act, the United States Environmental Protection Agency (USEPA) has approved the State Water Board’s certification of the US Forest Service’s water quality management plan, and the State Water Board’s certification of the practices therein as “best management practices”;

13. The Management Agency Agreement between the State Water Board and the US Forest Service contemplates that the Regional Water Quality Control Boards will waive issuance of waste discharge requirements for US Forest Service timber harvest projects that may result in

nonpoint source discharges, provided that the US Forest Service designs and implements its projects to fully comply with State water quality standards;

14. The California Department of Forestry and Fire Protection (CDF) and the California Board of Forestry (BOF) regulate timber harvest activities on nonfederal lands in accordance with the Z'berg-Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.) and the California Forest Practice Rules (Title 14, California Code of Regulations, Section 895 et seq.);

15. In 1988, the State Water Board: (a) conditionally certified the "Water Quality Management Plan for Timber Operations on Nonfederal Lands" which included those California Forest Practice Rules selected as best management practices and the process by which those rules are administered; (b) designated CDF and the BOF as joint WQMAs; and (c) executed a Management Agency Agreement with CDF and BOF for the purpose of implementing the certified plan and WQMA designations;

16. The Management Agency Agreement between the State Water Board and CDF/BOF required a formal review of the California Forest Practice Rules and administering processes no later than six years from the date of certification. To date, that review has not occurred;

17. To date, the USEPA has not approved the State Water Board's certification of the California Forest Practice Rules and administering processes for regulation of timber harvest activities on nonfederal lands in California;

18. On July 6, 1999, joint recommendations developed by staffs from four Regional Water Quality Control Boards (e.g., Lahontan, North Coast, Central Coast, Central Valley) were submitted to the BOF. Those recommendations detailed numerous amendments needed to the Forest Practice Rules in order to provide better protection for water quality and beneficial uses of water. To date, most of those recommendations have not been adopted by the BOF;

19. The Regional Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) (CEQA), has conducted an Initial Study in accordance with Title 14, California Code of Regulations, Section 15063;

20. The Regional Board staff has prepared a proposed Negative Declaration in accordance with CEQA and the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.), and the Negative Declaration concludes that the waiver of waste discharge requirements for specific types of timber harvest operations pursuant to this Resolution will not have a significant impact on the environment;

21. Copies of the proposed Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA;

22. The Regional Board conducted a public hearing on January 8, 2003 in Truckee, California, and considered all testimony and evidence concerning this matter;

THEREFORE BE IT RESOLVED:

1. In accordance with CWC Section 13269, the waste discharges related to timber harvest activities in the Lahontan Region shall be regulated in the future by waivers, or individual or general waste discharge requirements;
2. The Regional Board, based on the testimony received at the aforementioned hearing, and the information contained in the proposed Negative Declaration and the above-noted facts and findings, determines that the adoption of the “Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities” as set forth in Attachment A (Waiver) will not have a significant impact on the environment;
3. The Regional Board, in accordance with CEQA and the CEQA Guidelines, determines that there will be no significant adverse environmental impacts, individually, or cumulatively from the adoption of the Waiver authorized herein provided that there is compliance with the Waiver;
4. The Regional Board certifies that the Negative Declaration complies with CEQA and the CEQA Guidelines, and directs the Executive Officer to file all appropriate notices.
5. The Regional Board, based on the testimony received at the aforementioned hearing, and the information contained in the Negative Declaration and the above-noted facts and findings, finds that waiver of waste discharge requirements for certain specific types of timber harvest activities would not be against the public interest provided that dischargers subject to such waiver:
 - (a) comply with the conditions for waiver of waste discharge requirements as set forth in the Waiver; and
 - (b) file with the Regional Board the applicable eligibility documents as described herein, to demonstrate that compliance with the waiver conditions will be achieved; and
 - (c) comply with applicable State Water Board and Regional Board plans and policies, as summarized in Attachment 1 of the Waiver, and as those plans and policies may be amended from time to time through the amendment process.
6. The Regional Board, based on the above-noted facts and findings, determines that it is not necessary at this time to adopt individual or general waste discharge requirements for waste discharges related to timber harvest activities that meet the eligibility criteria specified in the Waiver and which are conducted in accordance with the conditions specified in the Waiver;
7. The Regional Board, based on the testimony received at the aforementioned hearing, and the information contained in the Negative Declaration and the above-noted facts and findings, hereby adopts the Waiver as set forth in Attachment A;

8. The discharge of any waste not specifically regulated by the Waiver described herein is prohibited unless the discharger complies with CWC Section 13260(a) and the Regional Board either issues waste discharge requirements pursuant to CWC Section 13263 or an individual waiver pursuant to CWC Section 13269 or the time frames specified in CWC Section 13264(a) have elapsed;

9. This Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263;

10. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Board from administering enforcement remedies (including civil liability) pursuant to the CWC;

11. The Executive Officer or Regional Board may terminate the applicability of the Waiver described herein to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the State;

12. In compliance with CWC Section 13269, the Executive Officer will develop and implement a program to evaluate compliance with the conditions pursuant to which waste discharge requirements are waived by this Resolution;

13. A waiver of waste discharge requirements for a type of discharge may be superseded by the adoption by the State Water Board or Regional Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge;

14. Pursuant to CWC Section 13269, the waiver of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration;

15. In compliance with California Water Code Section 13269, this Resolution and the Waiver described herein shall be reviewed and amended as necessary no later than five years from the date of adoption of this Resolution;

16. This waiver shall become effective on January 8, 2003, and shall expire on December 31, 2007;

17. As provided by CWC Section 13350(a), any person may be civilly liable if that person in violation of a waiver condition or waste discharge requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance;

18. The Regional Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as is appropriate.

Certification:

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on January 8, 2003.

Harold Singer
Executive Officer